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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,245	07/31/2000	MANFRED GERBER	ATM-2174	9769

7590 11/10/2003

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FISHER CHRISTEN & SABOL
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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/601,245

Applicant(s)

GERBER ET AL.

Examiner

Christopher P Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

WITHDRAWN REJECTIONS

1. The objections to the specification, abstract and claim 1 of record in Paper #5, Pages 2-4 Paragraphs 1-5 have been withdrawn due to Applicant's amendment and arguments in Paper #7.
2. The 35 U.S.C. 112 rejections of claims 1-14 of record in Paper #5, Pages 4-9 Paragraphs 6-7 have been withdrawn due to Applicant's amendment and arguments in Paper #7.
3. The 35 U.S.C. 102 rejections of claims 1-3, 5, and 8-14 as anticipated by Boswell of record in Paper #5, Pages 10-11 Paragraph 8 have been withdrawn due to Applicant's amendment in Paper #7.
4. The 35 U.S.C. 103 rejections of claims 6-7 and 13-14 over Boswell in view of Sander of record in Paper #5, Pages 12-13 Paragraph 9 have been withdrawn due to Applicant's amendment in Paper #7.

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5. The 35 U.S.C. 103 rejection of claim 4 over Boswell in view of Curiel of record in Paper #5, Pages 13-14 Paragraph 10 has been withdrawn due to Applicant's amendment in Paper #7.

NEW REJECTIONS

Claim Objections

6. Claim 15 is objected to because of the following informalities: Claims must be written as one sentence and there is a period that must be removed in line 15 of claim 15. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 15-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "the embossed design" in line 16. There is insufficient antecedent basis for this limitation in the claim. Also regarding claim 15 it is not

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understood if the limitations starting on line 16 are also optional following line 14 or if the limitations are referring to non-optional language ending at line 10.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 15-16 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Bussard (USPN 5,455,129).

Bussard anticipates a packaging laminate having an appearance similar to a hologram, the tube packaging laminate is a multilayered material having a layer structure consisting of one or more functional layers of plastic, in this case an adhesive layer is the functional layer (reference number 6, Figures 1 or 2 and abstract). A metal foil (reference number 4, Figures 1 or 2 and col.6) embossed over the whole or part of the surface is arranged on the functional layer. A layer of a lacquer coating is arranged thereon the metal foil (col.6, 1.25-40). A film containing a polyolefin (reference number 2,

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Figures 1 or 2) is arranged on the lacquer coating (col.6, 1.25-40). The embossed design is a damask pattern or a small worm design (Figures 1 or 2). The film containing a polyolefin is transparent and formed from polyethylene or polypropylene forms the outer-lying layer and has a thickness between 75 and 200 micrometers (col.5, 1.40-47). The surface of the functional layer away from the embossed metal is plane (Figures 1 or 2), and the surface of the lacquer coating away from the metal foil is plane except for recesses for optional patterns. When the laminate is used on porcelain cups (col.4, 1.65-67) the laminate is tube packaging because the cup is tube packaging and the laminate includes the substrate the laminate is attached to.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for

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establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bussard (USPN 5,455,129).

Bussard teaches a packaging laminate having an appearance similar to a hologram, the tube packaging laminate is a multilayered material having a layer structure consisting of one or more functional layers of plastic, in this case an adhesive layer is the functional layer (reference number 6, Figures 1 or 2 and abstract). A metal foil (reference number 4, Figures 1 or 2 and col.6) embossed over the whole or part of the surface is arranged on the functional layer. A layer of a lacquer coating is arranged thereon the metal foil (col.6, 1.25-40). A film containing a polyolefin (reference number 2, Figures 1 or 2) is arranged on the lacquer coating (col.6, 1.25-40). The embossed design is a damask pattern or a small worm design (Figures 1 or 2). The film containing a polyolefin is transparent and formed from polyethylene or polypropylene forms the outer-lying layer and has a thickness between 75 and 200 micrometers (col.5, 1.40-

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47). The surface of the functional layer away from the embossed metal is plane (Figures 1 or 2), and the surface of the lacquer coating away from the metal foil is plane except for recesses for optional patterns. When the laminate is used on porcelain cups (col.4, 1.65-67) the laminate is tube packaging because the cup is tube packaging and the laminate includes the substrate the laminate is attached to. The metal foil is an aluminum foil (col.6, 1.27-28).

Bussard fails to explicitly teach a lacquer coating between the functional layer and aluminum foil layer, a functional layer made from polyethylene, or the thicknesses of a functional layer, lacquer coating or aluminum foil layer. However, Bussard teaches that additional layers of various materials are also commonly found in these holographic products, such as different placements of lacquer coatings or another polyolefin layer between the metal foil and the adhesive layer (col.6, 1.30-40). Also the adhesive layer can be chosen based on the character of the two surfaces to be bound to each other, the circumstances under which the bonding is to be accomplished and the intended use of the resulting products (col.6, 1.3-8). Furthermore, adding duplicate layers of lacquer or polyethylene film to a laminate for the same purpose, as the original film is obvious to one having ordinary skill in the art, absent the showing of

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unexpected result or advantage of the duplicate layers. Bussard teaches that the lacquer and metal layers are thin layers and that one of the plastic layers is between 75 and 200 micrometers (col.6, 1.15-40). One of ordinary skill in the art would have recognized that the optimum thickness for the layers of the laminate would be determined through routine experimentation depending on the intended end result of the laminate.

Furthermore, in the figures 1 and 2 it is obvious that the functional layer or layers has a similar thickness to the film containing a polyolefin and the metal and lacquer layers are very thin layers compared to the plastic layers.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to add a duplicate lacquer and functional polyethylene layer, in order to increase the functionality of the original lacquer and polyethylene layers or create the adhesive from polyethylene, in order to adhere to an intended substrate, as taught by Bussard. It would have also been obvious to one having ordinary skill in the art to select the thicknesses of the layers within the ranges claimed, because Bussard teaches that the polyethylene film has a thickness between 20 and 200 micrometers, and that the functional layer has a similar

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thickness while the lacquer and metal layers are much thinner as taught in column 6 and figures 1 and 2.

ANSWERS TO APPLICANT'S ARGUMENTS

8. Applicant's arguments regarding the objections to the abstract, specification, and claim 1 have been considered but are moot since the objections have been withdrawn.

9. Applicant's arguments regarding the 35 U.S.C. 112 rejections of claims 1-14 have been considered but are moot since the rejections have been withdrawn.

10. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 1-3, 5, and 8-12 as anticipated over Boswell have been considered but are moot since the rejections have been withdrawn.

11. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 6-7 and 13-14 over Boswell in view of Sander have been considered but are moot since the rejections have been withdrawn.

12. Applicant's arguments regarding the 35 U.S.C. 103 rejection of claim 4 over Boswell in view of Curiel have been considered but are moot since the rejection has been withdrawn.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dietz et al (USPN 5,984,088); Chatwin et al (USPN 5,492,370); Phillips (USPN 5,977,263); Lu (USPN 5,743,981).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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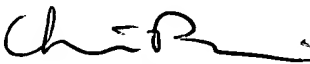
however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

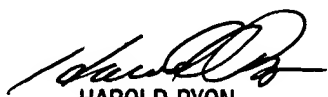
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 703-305-3440. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB 
October 29, 2003


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

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